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Supreme Court, U.S.
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No. 95-106

IN THE
Supreme Court of the United States

October Term, 1995

LORRAINE RIELLY,

Petitioner,

v.

NEWS GROUP BOSTON, INC., ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COMMONWEALTH OF MASSACHUSETTS APPEALS COURT

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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BATEMAN & SLADE, INC. BOSTON, MASSACHUSETTS

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STATEMENT OF THE CASE

The petitioner, Lorraine Rielly (the "petitioner"), brought this action for defamation, invasion of privacy and the tort of "false light" against News Group Boston, Inc., publisher of the Boston Herald (hereinafter the "Herald"), and Jonathan Wells, a Herald reporter, complaining of a portion of the August 18, 1991, "Pols & Politics" column written by Wells and published by the Herald (the "Column").[1] The Column concerned the undisputed fact that Kenneth Lyons was president of the National Association of Government Employees ("NAGE"), a

[1] The petitioner's father and stepmother brought separate suits in separate counties against these same respondents based on the Column.

national labor union which represents thousands of federal, state and local employees, and that relatives of Lyons, including his daughter Lorraine Rielly, were employees of NAGE or its subsidiary.[2]

The Column stated in part:

> *National Assoc. of Lyons*
>
> Kenneth T. Lyons, president of the National Association of Government Employees (NAGE), must have taken the same nightschool course in personnel management as his pal, Senate President William M. Bulger.
>
> Lyons, like Bulger, is adept at securing gainful employment for members of his family.
>
> According to NAGE's fiscal year 1990 annual report, Lyons' wife, Evelyn, is on the union's payroll to the tune of $42,644 a year.
>
> Lyons's daughter, Lorraine Rielly, also is on the NAGE pad. She was paid $39,722 last year. Lorraine's husband, Edward Rielly, was reportedly paid by NAGE while he served as a voluntary driver/bodyguard for John R. Silber in last year's governor's race.
>
> If that's not enough, Lyons' stepdaughter, Kim Saliba, turns up as the treasurer of a NAGE subsidiary, Insurance Administrators, Inc., whose directors are Lyons and two other top NAGE officials.

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[2] The petitioner also sued Patrick Purcell, publisher of the Herald, and Joe Sciacca, Patricia Mangan, Laura Raposa, Robert Connolly and Jeff Jacoby, all of whom were Herald reporters who contributed to other portions of the column and none of whom contributed in any way to the portion of the column which concerned the petitioner.

> Lyons himself drew a $90,565 salary from the union, plus $5,000 in "allowances" and $9,260 in reimbursed expenses. Grant total: $104,825.

The Herald published the Column as part of its "Pols & Politics" column. That column contained humorous items and tongue-in-cheek comments. The petitioner herself admitted that she understood that the column contained commentary.

PROCEDURAL HISTORY

The petitioner brought this action in the Superior Court Department of the Trial Court of Massachusetts, Middlesex County (the "Superior Court") on August 26, 1991. After extensive discovery, the respondents moved for summary judgment pursuant to Massachusetts Rule of Civil Procedure 56. The petitioner filed a written opposition to the respondents' motion, and, through her counsel, presented oral argument in opposition to the motion. In her opposition brief and at oral argument, the petitioner did not assert or claim that she would be deprived of any federal constitutional rights if the respondents' motion were granted.

The Superior Court allowed respondents' motion for summary judgment and held that the phrase, "on the NAGE pad", when read in the context of the Column, could only mean "on the NAGE payroll." In its decision, the court did not rely on or refer to any federal statutory, constitutional or decisional law.

The petitioner appealed the Superior Court's decision to the Massachusetts Appeals Court (the "Appeals Court"). In her principle brief and her reply brief in support of her appeal, the petitioner did not assert or claim that the Superior Court's grant of summary judgment deprived her of any federal constitutional right. The Appeals Court affirmed the decision of the Superior Court and held that the phrase, "Lorraine Rielly, also

is on the NAGE pad," "in the totality of the article in the context in which it was published" was not capable of a defamatory meaning as a matter of law. (Petition, App. B). The Appeals Court, in its decision, did not rely on or refer to any federal statutory, constitutional or decisional law.

On February 9, 1995, the petitioner filed an application for further appellate review in the Supreme Judicial Court of the Commonwealth of Massachusetts. In that application, the petitioner argued that the Appeals Court had erred in affirming the Superior Court's grant of summary judgment on her defamation claim.[3] The petitioner did not assert or claim that the actions of either the Superior Court or the Appeals Court had deprived her of any federal constitutional right. On March 27, 1995, the Supreme Judicial Court, without comment, denied the petitioner's application for further appellate review.

SUMMARY OF ARGUMENT

The essence of the Petition is that the petitioner disagrees with the state court's holding that the phrase at issue is not capable of a defamatory meaning as a matter of state law. Such disagreement does not and cannot provide a basis for further appellate review by this Court. Her efforts to introduce unsupported federal constitutional claims at this very late stage of the proceedings should be rejected where she raised no federal questions below and where the state court based its decision on state law.

Because this case does not involve any issue of federal law, the Court lacks jurisdiction to grant the Petition. The Massachusetts trial court found, on summary judgment, and the

[3] The petitioner did not seek review of the Appeals Court's decision to affirm the Superior Court's grant of summary judgment on her claims of invasion of privacy and the tort of "false light."

Appeals Court affirmed, that the Column published by the respondents was not capable of a defamatory meaning and that the petitioner's claim was not actionable under the Massachusetts common law of defamation.

Further, the Petition should not be granted because the petitioner did not raise any federal issue in the state trial or appellate courts. Before the Massachusetts Superior Court, Appeals Court and Supreme Judicial Court, the petitioner never claimed that granting summary judgment for the respondents would violate or even implicate her rights under the First, Fifth or Fourteenth Amendments of the United States Constitution.

Finally, the Massachusetts courts did not violate the petitioner's procedural due process rights by granting the respondents summary judgment. The petitioner was afforded all process due her under the Massachusetts Rules of Civil Procedure. Use of summary judgment procedures to foreclose a civil litigant from proceeding to trial does not constitute a deprivation of due process. Even if the Massachusetts court erred, as a matter of state law, in disposing of the petitioner's claim on summary judgment, such an error by a state court on an issue of state law does not implicate the petitioner's federal rights.

ARGUMENT

I. This Court Lacks Jurisdiction To Review This Case Because The Decision Of The Massachusetts Appeals Court Was Based Exclusively On State Grounds.

The Court lacks jurisdiction over this case because the Massachusetts Appeals Court based its decision on Massachusetts common law, and not on any federal law. 28 U.S.C. § 1257 (1993) (Providing that the Supreme Court may review decisions of state courts only where there is an issue of federal law); *Mich-*

igan v. *Long*, 463 U.S. 1032, 1038 n.4 (1983) (Noting that the jurisdiction of the Court "fails" where a state court's judgment is adequately supported by state law, independent of federal law).

The Appeals Court held as a matter of law that the phrase, "Lorraine Rielly, also is on the NAGE pad," in the context it was used, was not capable of a defamatory meaning. Whether an allegedly libelous statement is capable of a defamatory meaning is an issue that Massachusetts courts traditionally determine as a matter of Massachusetts common law. *Foley* v. *Lowell Sun Publishing Co.*, 404 Mass. 9, 11 (1989); *Ricci* v. *Crowley*, 333 Mass. 26, 27-28 (1955); *Nearis* v. *Essex County Newspapers, Inc.*, 2 Mass. App. Ct. 831 (1974). The Appeals Court, in its reported decision, relied exclusively on Massachusetts case law and did not refer to or discuss any federal statutory, constitutional or decisional law.

As the decision of the Massachusetts Appeals Court does not rest on, and is not interwoven with federal law, there is no jurisdictional basis for this Court to grant a Writ of Certiorari. *Michigan* v. *Long*, 463 U.S. 1032, 1040 (1983) (Holding that the Court will review state court decisions only where the decision "fairly appears to rest primarily on federal law or to be interwoven with federal law."); *Illinois* v. *Rodriguez*, 497 U.S. 177, 182 (1990) ("When a state-court decision is clearly based on state law that is both adequate and independent, we will not review the decision.")

II. The Petitioner Did Not Raise Any Federal Question Before The Massachusetts Courts.

This Court should not review the decision of a state court where the petitioner failed to raise any federal issue during the state court proceedings. The petitioner claims that the decision of the state court, in allowing respondents' motion for

summary judgment, violated her rights under the Fifth and Fourteenth Amendments of the United States Constitution. (Petition at p. 7). Such claims are not properly before this Court because the petitioner did not raise those issues before the Massachusetts Superior Court, Appeals Court or Supreme Judicial Court. *Bankers Life & Casualty Co.* v. *Crenshaw*, 486 U.S. 71, 77-78 (1988) ("At the minimum . . . there should be no doubt from the record that a claim under a *federal* statute or the *Federal* Constitution was presented in the state courts and that those courts were apprised of the nature or substance of the federal claim at the time and in the manner required by the state law.")[4]; *Webb* v. *Webb*, 451 U.S. 493, 495 (1981) (Dismissing case without reaching the merits where petitioner failed to specially set up or claim any federal constitutional right during state court proceedings.) (28 U.S.C. § 1257 (1993)) (Requiring that a party seeking review by the Supreme Court have "specially set up or claimed under the [Federal] Constitution" the right which the party seeks to have the Supreme Court enforce.).

Supreme Court Rule 14(h) requires that a petitioner who seeks review of a judgment of a state court "specify the stage in the procedings, both in the court of first instance and in the appellate courts, at which the federal questions sought to be reviewed were raised; the method or manner of raising them and the way in which they were passed upon by those courts." The Petition is devoid of any such specification because, in fact, the petitioner *never* raised, in the Massachusetts courts, the federal issues that she now seeks to have this Court review. Before the Massachusetts Superior Court, Appeals Court, and Supreme Judicial Court, the petitioner never argued that granting respondents summary judgment would violate or even im-

[4] This Court has left open the question of whether failure to raise a federal claim below is a jurisdictional bar, or a prudential restriction. *Bankers Life & Casualty Company* v. *Crenshaw*, 486 U.S. 71, 79 (1988).

plicate her rights under the Fifth or Fourteenth Amendments to the United States Constitution. In particular, the petitioner never argued, as she does to this Court, that she had a due process right under the Fifth and Fourteenth Amendments of the United States Constitution to present her defamation claim to a jury. Therefore, this Court should not grant the Petition for a Writ of Certiorari.

III. The Massachusetts Courts Did Not Violate The Petitioner's Federal Procedural Due Process Rights By Granting The Respondents Summary Judgment.

The petitioner claims that the Massachusetts court violated her right to procedural due process. The petitioner does not allege that the process that led to the state court granting summary judgment was flawed. Instead, she apparently takes the position that the granting of summary judgment is itself a denial of due process because it denies the losing party a trial. (Petition at pp. 10-11). Her argument is without merit.

The petitioner received all appropriate process due a civil plaintiff — she was afforded the opportunity to take discovery, she received notice of respondents' motion for summary judgment, and she had the opportunity to be heard at the hearing the trial court held on respondents' motion for summary judgment. To the extent that the petitioner claims that the granting of summary judgment itself is a denial of procedural due process, her claim is without merit.

The use of the summary judgment procedures is constitutional and does not violate any guarantees of procedural due process.[5] *Fidelity & Deposit Co.* v. *United States*, 187 U.S.

[5] The Superior Court applied Massachusetts Rule of Civil Procedure 56 in granting summary judgment. That rule is nearly identical to Federal Rule of Civil Procedure 56. Granting a Writ of Certiorari in this case would be appropriate only if there is a

315, 320-21 (1902) (Holding that a District of Columbia trial court's granting of summary judgment to a plaintiff did not deprive the defendants of due process of law or of their right to a trial by jury); *Davis* v. *United States Government*, 742 F.2d 171, 173 (5th Cir. 1984) (Holding that plaintiff's constitutional right to a jury was not "violated by the granting of summary judgment for there were no material facts in dispute.")

In defamation cases, the specific issue of whether the publication at issue is capable of a defamatory meaning is initially an issue of law for the judge to decide. *Foley* v. *Lowell Sun Publishing Co.*, 404 Mass. 9, 11 (1989) ("[I]n a defamation action a threshold issue is whether the statement is reasonably susceptible of a defamatory meaning, and that determination is a question of law for the court."); *U.S. Healthcare, Inc.* v. *Blue Cross of Greater Philadelphia*, 898 F.2d 914 (3rd Cir.), *cert. denied*, 498 U.S. 816 (1990); Restatement (Second) of Torts, § 614 (1977) ("The court determines (a) whether a communication is capable of bearing a particular meaning, and (b) whether that meaning is defamatory.")

The petitioner claims that the state court erred when it granted summary judgment to the respondents. She argues that there was a genuine issue of material fact as to whether the phrase, "on the NAGE pad", in the context it was published, was capable of a defamatory meaning. (Petition, pp. 8-9). However, even if the state court erred in its application of state law, which the respondents do not concede, any such error does not and cannot constitute a violation of the petitioner's *federal* constitutional right to procedural due process. *Engle* v. *Isaac*, 456 U.S. 107, 121 n.21 (1982) ("We have long recognized that a 'mere error of state law' is not a denial of due process."); *Gryger* v. *Burke*, 334 U.S. 728, 731

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serious issue, which there is not, as to the constitutionality of Federal Rule of Civil Procedure 56.

(1948) ("We cannot treat a mere error of state law, if one occurred, as a denial of due process; otherwise, every erroneous decision by a state court on state law would come here as a federal constitutional question.")

CONCLUSION

For the reasons stated above, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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